

UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

IN RE: CITY OF DETROIT, . Docket No. 13-53846  
MICHIGAN, .  
 . Detroit, Michigan  
 . October 21, 2013  
Debtor. . 10:00 a.m.  
. . . . .

HEARING RE. PRETRIAL CONFERENCE RE. ELIGIBILITY  
BEFORE THE HONORABLE STEVEN W. RHODES  
UNITED STATES BANKRUPTCY COURT JUDGE

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1 THE CLERK: All rise. Court is in session. Please  
2 be seated. Case Number 13-53846, City of Detroit, Michigan.

3 THE COURT: Good morning. Our first order of  
4 business is to admit a new attorney to the Bar of the Court.

5 MR. WILKINS: Good morning, Judge Rhodes. Matthew  
6 Wilkins for the Retiree Committee. Please meet Anthony  
7 Ullman from the Dentons office in New York.

8 THE COURT: Mr. Ullman.

9 MR. ULLMAN: Good morning, your Honor.

10 THE COURT: Welcome. Are you prepared to take the  
11 oath of admission to the Bar of the Court?

12 MR. ULLMAN: I am, your Honor.

13 THE COURT: All right. Please raise your right  
14 hand. Do you affirm that you will conduct yourself as an  
15 attorney and counselor of this Court with integrity and  
16 respect for the law; that you have read and will abide by the  
17 civility principles approved by the Court; and that you will  
18 support and defend the Constitution and laws of the United  
19 States?

20 MR. ULLMAN: I do.

21 THE COURT: Welcome again.

22 MR. ULLMAN: Thank you, your Honor.

23 THE COURT: We'll take care of your paperwork for  
24 you. You're all set.

25 MR. ULLMAN: Thank you very much, your Honor.

1 MR. MONTGOMERY: Your Honor, matter of personal  
2 privilege, I'd like to yield my seat at the pretrial  
3 discussion to Mr. Ullman.

4 THE COURT: Okay. That's fine. I think we should  
5 begin with appearances for this pretrial conferences.  
6 Counsel, please.

7 MR. IRWIN: Good morning, your Honor. Geoff Irwin  
8 from Jones Day on behalf of the city.

9 THE COURT: Okay.

10 MR. HERTZBERG: Your Honor, Robert Hertzberg, Pepper  
11 Hamilton, on behalf of the city.

12 MR. BENNETT: Bruce Bennett, Jones Day, on behalf of  
13 the city.

14 MS. LEVINE: Good morning, your Honor. Sharon  
15 Levine, Lowenstein Sandler for AFSCME. Thank you.

16 MR. ULLMAN: Your Honor, Anthony Ullman for the  
17 Retiree Committee from Dentons.

18 MR. GORDON: Good morning, your Honor. Robert  
19 Gordon of Clark Hill on behalf of the Detroit Retirement  
20 Systems. Also in attendance with me is Ron King from Clark  
21 Hill, Shannon Deeby, and I believe Jennifer Green is going to  
22 be here. She's stuck in security right now.

23 THE COURT: Okay.

24 MR. GORDON: Thank you.

25 MS. PATEK: Your Honor, Barbara Patek and Julie

1 Teicher of Erman Teicher for the Detroit Public Safety  
2 Unions.

3 MR. DECHIARA: Good morning, your Honor. Peter  
4 DeChiara from the law firm of Cohen, Weiss & Simon, LLP, for  
5 the International Union UAW.

6 MR. MORRIS: Good morning, your Honor. Thomas  
7 Morris of Silverman & Morris, also Ryan Plecha of Lippitt  
8 O'Keefe for the Retiree Association parties.

9 MR. MONTGOMERY: Your Honor, Claude Montgomery from  
10 Dentons US, LLP, rounding out the appearances for the Retiree  
11 Committee.

12 MS. BRIMER: Good morning, your Honor. Lynn M.  
13 Brimer appearing on behalf of the Retired Detroit Police  
14 Members Association.

15 MR. WERTHEIMER: Good morning, your Honor. William  
16 Wertheimer on behalf of the Flowers plaintiffs.

17 MR. SCHNEIDER: Good morning. Matthew Schneider,  
18 Michigan Department of Attorney General, on behalf of the  
19 state.

20 MR. WEINER: Good morning, your Honor. Dan Weiner,  
21 Schafer & Weiner, counsel for Ambac.

22 THE COURT: Thank you, counsel. The Court reviewed  
23 the joint final pretrial order. Thank you very much for your  
24 cooperation in preparing that. It looks perfectly acceptable  
25 to me with the exception of the exhibit numbering. Is that

1 being taken care of by somebody?

2 MR. IRWIN: Yes, your Honor. We intend to submit a  
3 modified pretrial order, and we will take care of that and a  
4 number of other administrative or other nits that have been  
5 pointed out to me. This came together very quickly, and  
6 so --

7 THE COURT: Okay.

8 MR. IRWIN: -- we'll try to fix as much as we can.  
9 I think we'll try to do that today. It would certainly be no  
10 later than tomorrow.

11 THE COURT: Okay. That's fine. So what I would  
12 like to discuss with you is how long this trial might take.  
13 Anybody have any thoughts on that question? It's important  
14 because, as you all know, we are visitors here in this  
15 courthouse, and so we need to make arrangements for  
16 courtrooms to the extent we can foresee the need.

17 MR. IRWIN: Certainly, your Honor. This is  
18 something that we have not yet engaged objectors on and had a  
19 discussion that I can really use to predict how long it will  
20 take. I will tell you that we will try to put in a tight  
21 case. We can't control cross-examination. I would think  
22 that in order to put on the city's case, we would expect to  
23 be done on Friday at the latest. If crosses are crisp and we  
24 can get through issues and there are a lead cross-examiner  
25 and perhaps some follow-ups, then I think that we could

1 probably get our case in by the end of the day Friday, again,  
2 at the latest.

3 THE COURT: Anyone else have any thoughts on this  
4 question, please?

5 MS. LEVINE: Your Honor, for the objectors, we've  
6 had some conversations along similar lines, so the city's  
7 timeline for getting its case on makes sense. Each of the  
8 objectors probably has one, maybe two witnesses, but they  
9 would be short depending upon whether or not your Honor  
10 accepts declarations and/or quick direct. Then it would be  
11 subject to cross. In addition to that, there will be some  
12 videotape depositions, which are still under discussion but  
13 we believe would likely come in at the end of the case, so  
14 whether and to what extent your Honor needs a full courtroom  
15 for that would be up to the Court. Thank you.

16 THE COURT: Since you raise the issue of  
17 declarations, I suppose if you all agree to it I would accept  
18 it. I am not, however, a fan of that process. My preference  
19 is for live testimony of direct examination, but, like I say,  
20 if you all stipulate to it and insist upon it, I won't stand  
21 in the way.

22 MR. IRWIN: Your Honor, it is our intent to bring  
23 all of our witnesses live. The witnesses who submitted  
24 declarations in connection with the opening motion will all  
25 be here. They will all give fulsome direct testimony. I

1 believe it will be consistent with the declarations that were  
2 submitted, and if there is some utility to admitting  
3 declarations in addition to the live testimony, particularly  
4 insofar as perhaps shortening some of the witnesses who  
5 objectors might call and the cross that's needed on them, we  
6 would certainly be willing to consider that, and we'll work  
7 with objectors on that, but our witnesses are coming live.

8 THE COURT: Okay.

9 MR. ULLMAN: Your Honor, one question we had is how  
10 you wanted to handle things in terms of the playing of video  
11 depositions and transcripts. Did you want that played live  
12 in the courtroom and, to the extent there are transcripts,  
13 read with question and answers as opposed to a submission to  
14 you?

15 THE COURT: No. My preference on both of those is  
16 for you all to allow me to do that privately in chambers.

17 MR. ULLMAN: Very good. Thank you.

18 MR. SCHNEIDER: Your Honor, on behalf of the State  
19 of Michigan, we're still having some discussions because it  
20 does go to the issue of timing as to whether the governor's  
21 testimony is actually necessary. As you know, both the  
22 governor and the treasurer, they gave videotape depositions.  
23 We do not believe the governor should testify because it's  
24 unnecessary, so if he is not testifying, it would speed up  
25 the trial.

1           THE COURT: Okay. Have the objectors made any  
2 decision on this issue, anybody?

3           MR. DECHIARA: Peter DeChiara for the UAW, your  
4 Honor. The UAW and the Flowers plaintiffs have issued trial  
5 subpoenas upon Governor Snyder, Treasurer Dillon, and Richard  
6 Baird. We have not heard back from the state as to whether  
7 the state is going to -- and we have not received any motion  
8 from the state opposing the subpoenas or resisting the  
9 subpoenas, so our plan is to go ahead and have them testify  
10 live at trial.

11           THE COURT: Okay. So did anyone actually sit down  
12 and count up the number of witnesses on the objectors' side,  
13 an approximate count? Anybody?

14           MR. ULLMAN: I think we -- the answer is we don't  
15 know, but what we can do is do a count and promptly inform  
16 the Court.

17           THE COURT: Let's just take a brief pause and ask  
18 one of you to just total it up as best you can, you know,  
19 give or take a few. And I'm not going to hold you to a  
20 number. I just want to get an approximate number of  
21 witnesses that you're talking about.

22           MR. IRWIN: Your Honor, if I may, while --

23           THE COURT: Hang on.

24           MR. IRWIN: Yeah.

25           THE COURT: I want to get this number and have them

1 focus on that, and then I'll hear from you. Sir?

2 MR. ULLMAN: Your Honor, for the live witnesses, the  
3 count I came up with is 16, possibly 15. That includes the  
4 state witnesses. Some of them will be short. And this  
5 excludes deposition or witnesses who come in by transcript.

6 THE COURT: Okay. Thank you very much. Sir?

7 MR. IRWIN: Your Honor, I was simply going to add at  
8 the end of Mr. DeChiara's statement about the state witnesses  
9 and the need for live testimony, the city has offered to have  
10 the entire depositions of each of those three witnesses  
11 admitted without objection, and we are still willing to do  
12 that. I don't know if there's an opportunity to do that, but  
13 we'd work with objectors to get that accomplished.

14 MR. SCHNEIDER: Just to be clear, your Honor, for  
15 the record, the state is now making an oral motion to make  
16 sure that the depositions are the ones that are played of the  
17 governor, of the treasurer, and Mr. Baird. We can supplement  
18 that in writing, but I thought since we were all here, I  
19 would make that motion now.

20 THE COURT: You mean in lieu of live testimony?

21 MR. SCHNEIDER: That's correct, your Honor.

22 THE COURT: That's not exactly what the Federal  
23 Rules of Civil Procedure or of Evidence contemplate, is it?

24 MR. SCHNEIDER: I'd be happy to put it in writing,  
25 but I wanted to -- just because I was here, the parties are

1 here, I wanted to bring that to the Court's attention.

2 THE COURT: The rules contemplate the use of  
3 deposition testimony when witnesses are not available, so why  
4 should there be a different process here?

5 MR. SCHNEIDER: Well, one thing we would like to  
6 know is if the objectors want the governor as a witness, we  
7 would --

8 THE COURT: I asked that question and thought I  
9 heard the answer was yes.

10 MR. SCHNEIDER: I'm sorry. If the governor -- if  
11 the objectors want the governor as a witness, then we would  
12 want direction as to when would we be doing this in the trial  
13 because --

14 THE COURT: Okay. That's a fair question.

15 MR. SCHNEIDER: Yes.

16 THE COURT: Yeah. Can anyone address that?

17 MR. DECHIARA: Peter DeChiara, your Honor. We  
18 recognize that the governor is a very busy man, as are Mr.  
19 Dillon and Mr. Baird, and we would be perfectly happy to  
20 accommodate their schedule so that they testify during the  
21 trial at a time that is convenient to them and makes sense to  
22 the Court, so we're certainly not going to make any  
23 unreasonable demands to, for example, have the governor of  
24 the state sit here for the duration of the trial.

25 THE COURT: All right. Let me just ask the two of

1 you to try to work this out in a way that makes sense. I'm  
2 sure you'll be able to.

3 MR. DECHIARA: Okay. Your Honor, if the state is  
4 making a motion to oppose having the governor and the  
5 treasurer and Mr. Baird appear live at trial, we would ask  
6 that that motion be in writing, we'd be given proper time to  
7 respond in writing, and that it be done according to the  
8 court rules. Thank you.

9 THE COURT: All right. The only other issue I  
10 wanted to raise is whether or not to impose time limits on  
11 the presentation of evidence by each side, so let me ask you  
12 what your views on that should be and if it is decided to do  
13 that, how much time is appropriate on each side.

14 MR. IRWIN: Your Honor, we have given this a little  
15 bit of thought, and consistent with what I indicated when you  
16 asked for a preview of how long our case would take to put  
17 in, it would be our hope and expectation that the entire case  
18 could be completed by Tuesday of the next week, that we would  
19 not need to spill into the additional time that the Court had  
20 allocated. I think we have a three-day break after Tuesday  
21 and then we return the following week. I suspect we could  
22 probably, if we had that type of time constraint, work out  
23 among ourselves a good allocation of time. I think we would  
24 be done, as I indicated, by Friday, which I think, based on  
25 what I know of the nature of the testimony that will come in

1 from the witnesses, even though it's a dozen or more, I think  
2 that those can be accomplished in a very short period of  
3 time. The crosses would be very short, very tight. I  
4 suspect that there will be some cumulative testimony that we  
5 will need to work through but that the parties could work  
6 through it and may need the Court's intervention at some  
7 point, but I believe, based on what I understand the response  
8 case to be in its entirety, even with the state witnesses  
9 coming live, we should be able to get this done in the five  
10 days that don't spill over into the second week.

11 MR. ULLMAN: Your Honor, speaking for the committee,  
12 when I heard the estimate that the city's case would take  
13 through the end of Friday, my reaction was that was longer  
14 than I had expected, so for the committee, I think we'd be  
15 interested in talking about reasonable time lines, reasonable  
16 time frame for the testimony. To do that, we'd really have  
17 to first confer with the city and understand exactly how long  
18 they intended to put witnesses on, but I certainly would have  
19 thought that we would have been done with the city's case  
20 before the end of Friday.

21 THE COURT: Um-hmm. Okay.

22 MR. IRWIN: If I may, just to be -- we would be done  
23 much sooner than Friday. I'm trying to allow for what I  
24 can't control. I have no idea how long cross will be on  
25 someone like Mr. Orr. If it -- if we are talking about the

1 city's affirmative case, we could probably be done in a day.  
2 We might take some of Thursday. We would be done very  
3 quickly, but I just don't know what I don't know.

4 THE COURT: Right. One of the things I want to  
5 control by imposing a time limit is the concern about  
6 duplicate questioning on cross-examination. Have you all  
7 thought about how to deal with that question other than by  
8 time limits, for example?

9 MS. LEVINE: Your Honor, the objectors have started  
10 coordinating and have put together an order where, for  
11 example, AFSCME has agreed to go last so that if the  
12 questions have already been asked, we don't have to ask  
13 anything. And the goal is -- and I think you've seen this in  
14 the oral argument -- that we parse it together carefully  
15 and --

16 THE COURT: Um-hmm.

17 MS. LEVINE: -- we don't overstep, so with the  
18 Court's permission, we'd like to let that try without  
19 imposing potentially artificial time limits that stop actual  
20 questions from being asked once.

21 THE COURT: And when you say "an order," you mean an  
22 order of questioning? That's what you mean?

23 MS. LEVINE: Yes.

24 THE COURT: Yeah.

25 MS. LEVINE: Sequencing.

1           THE COURT: All right. Okay. Well, I am pleased to  
2 hear that everyone, at least at the outset, has the intent to  
3 proceed here efficiently and crisply. I commend you for  
4 that. It will, of course, remain to be seen whether this  
5 intent actually gets executed or not, but in the  
6 circumstances I'm feeling less inclined to impose actual  
7 hours of time limits, so let me ask you to continue your  
8 efforts to try to make this as efficient a process as  
9 possible. So that's really all that I thought was necessary  
10 to discuss this morning, but I would like to turn the agenda  
11 over to anyone to address any issues that you'd like to bring  
12 up at this time.

13           MR. ULLMAN: Your Honor, I just wanted to apprise  
14 the Court that we have either filed or are in the process of  
15 filing a motion in limine seeking to exclude any purported  
16 expert evidence to the effect that the unfunded pension  
17 liability is 3.5 billion, and I just wanted to let you know  
18 that that either has been done or is in the works so that the  
19 Court is aware of that, your Honor.

20           THE COURT: Well, okay. Thank you for that notice.  
21 I will say for your -- that's okay.

22           MR. ULLMAN: Apologize, your Honor.

23           THE COURT: If you need to consult, I'll pause here.

24           MR. ULLMAN: No, no. I'm not sure if it's been  
25 done, but it's being -- it's in process.

1 THE COURT: Okay. Obviously I can't control what  
2 you file, so you file what you'd like to file. I will tell  
3 you, however, that I am not a fan of motions in limine. Most  
4 of the time when they are filed, in my experience, the  
5 resolution of the motion has to await the trial process, and  
6 it's more often than not not something that the Court can  
7 clearly rule on in advance of the trial, but, like I say, if  
8 this is something you feel the need to file, you file it.

9 MR. ULLMAN: We did, your Honor, and I appreciate  
10 that. And one virtue is it's short.

11 THE COURT: Okay. That would be a virtue. Is there  
12 anything else that anyone would like to bring up today this  
13 morning?

14 MR. GORDON: I just want to ask a question, and I  
15 apologize --

16 THE COURT: Sir.

17 MR. GORDON: -- your Honor. Robert Gordon again.  
18 Is there an agreed upon order for the witnesses that the city  
19 is going to put on? I'm not sure if that was clear from the  
20 pretrial order.

21 THE COURT: Um-hmm. Can you share with everyone  
22 here what the order of your witnesses will be?

23 MR. IRWIN: I can, your Honor, and I appreciate from  
24 Mr. -- the order of witnesses was slightly impacted by some  
25 discussions we were having on a few exhibits, and so we don't

1 need to call a couple of custodial witnesses, which I think  
2 is in everyone's interest. Yes. Our order of witnesses will  
3 be -- we will start with Mr. Malhotra from Ernst & Young. He  
4 submitted a declaration, and I think the Court is familiar  
5 with Mr. Malhotra. He will be followed by Mr. Moore, who  
6 also submitted a declaration, who will be followed by Mr.  
7 Buckfire, Ken Buckfire. Then he will be followed by Police  
8 Chief Craig, and he will be followed by Mr. Orr, the  
9 emergency manager, and that's the order that we're planning  
10 to call.

11 THE COURT: All right. Thank you.

12 MR. IRWIN: The other -- your Honor, just a few  
13 housekeeping matters and just some direction from the Court  
14 perhaps. As I indicated, we will be submitting a modified  
15 pretrial order consistent with the Court's request for  
16 exhibit ranges from the objectors and other clean-up that we  
17 needed to do from last week. There are -- and I wanted to  
18 alert the Court to this. There are ongoing depositions.  
19 There are still a few to be concluded, but there were  
20 depositions that took place either in the middle or through  
21 the end of last week and even over the weekend that the  
22 designations or import of which could not have been  
23 incorporated into the pretrial order --

24 THE COURT: Um-hmm.

25 MR. IRWIN: -- on Thursday, so there may be

1 additions to the pretrial order as a consequence, and there  
2 may even need to be some further supplementation in the form  
3 of --

4 THE COURT: Um-hmm.

5 MR. IRWIN: -- supplemental dep designations and the  
6 like that just could not have been done before these things  
7 were required to have been submitted. And I think that may  
8 be true on both sides.

9 THE COURT: Um-hmm.

10 MR. IRWIN: And we'll work together on that.

11 THE COURT: Can I suggest that on that issue that  
12 you hold up the filing of any such supplementation until the  
13 end of the trial so that it only has to be done once?

14 MR. IRWIN: Thank you, your Honor.

15 THE COURT: Is that okay?

16 MR. IRWIN: Yes. As a matter of procedure, your  
17 Honor, we have made disclosures to each other in advance of  
18 the pretrial order, particularly on exhibits and witnesses.  
19 There are a number of exhibits on both sides to which there  
20 are no objections. Does the Court have a preference as to  
21 how those objections -- or how those exhibits can be moved  
22 into the record?

23 THE COURT: Oh, I meant to mention this before, and  
24 thank you for bringing it up. It is the Court's practice to  
25 enter an order admitting into evidence today or tomorrow

1 those exhibits as to which your joint final pretrial  
2 statement shows there's no objection, and we will identify  
3 those by number in the order.

4 MR. IRWIN: Thank you, your Honor.

5 THE COURT: It is not my usual practice to rule on  
6 objections in advance of trial and to just deal with them  
7 when and if there is a motion to admit the document and an  
8 objection stated at that time.

9 MR. IRWIN: Your Honor, in that regard, in terms of  
10 just the mechanics of witness examination -- and we've had  
11 people into court and we've talked about technology, and I  
12 think we're pretty set up in that regard. It is our  
13 expectation that we will have complete exhibit books for the  
14 witnesses. We do not intend to hold the witness books.  
15 That's cumbersome in --

16 THE COURT: Right.

17 MR. IRWIN: -- this case, and so many of the  
18 documents are not objected to.

19 THE COURT: Right.

20 MR. IRWIN: We'll have books ready for everyone  
21 there.

22 THE COURT: Good.

23 MR. IRWIN: Does the Court have a preference in  
24 terms of once a final set of deposition designations is  
25 agreed upon, how those are submitted? We can submit, you

1 know, with color-coded designations or counter-designations  
2 from the two sides. Does the Court have a preference in that  
3 regard, or would the Court just prefer that we work that out  
4 together?

5 THE COURT: Again, whatever you work out and  
6 whatever you all think will be the most efficient way to do  
7 that is fine with me.

8 MR. IRWIN: Okay.

9 THE COURT: I'm completely flexible on that issue.

10 MR. IRWIN: Okay. The last point, your Honor, the  
11 city is prepared -- and we had made exhibit exchanges. The  
12 city is prepared to provide its now premarked set of trial  
13 exhibits to objectors. I think the Retiree Committee has --  
14 we have not -- we have not provided anyone copies yet, but we  
15 have them. The Retiree Committee provided us with theirs  
16 last night. We still need those from other objectors and  
17 something that we'll work through today, but we are at a  
18 little bit of a disadvantage not having a full set of trial  
19 exhibits from a number of the objectors yet, so we'll work on  
20 that, but we really need those today because the disclosures  
21 that were made early last week were sufficient for that  
22 purpose, but we have to have -- we have to know exactly what  
23 their exhibits correspond to in connection with putting the  
24 final pretrial order in today.

25 THE COURT: Does anyone object to providing sets of

1 exhibits to the city by, say, noon tomorrow?

2 MS. LEVINE: Your Honor, that'll be fine because in  
3 conferring with the Retirement System, it's our understanding  
4 actually that all of the objectors forwarded their exhibits  
5 to the Retirement System, who's just got better technology  
6 than some of the rest of us, and that they have actually  
7 shared a global list with the city's counsel.

8 THE COURT: Okay.

9 MR. ULLMAN: Your Honor, I was asked to find out  
10 whether there's a secure spot in the courtroom where the  
11 exhibits can be stored.

12 THE COURT: You mean like for overnight and --

13 MR. ULLMAN: Yeah.

14 THE COURT: -- breaks?

15 MR. ULLMAN: Yeah, in terms of making sure  
16 everything is kept in place and nothing happens. We all know  
17 where everything is.

18 THE COURT: Well, is it your concern that locking  
19 the courtroom overnight is not sufficient for security --

20 MR. ULLMAN: Actually --

21 THE COURT: -- because that is what happens?

22 MR. ULLMAN: Having seen the security people in  
23 place here, I think that would actually work very well  
24 because --

25 THE COURT: All right.

1 MR. ULLMAN: -- they're extremely vigilant.

2 THE COURT: All right.

3 MR. ULLMAN: And then the last question --

4 THE COURT: If you discover at some point that you  
5 need more security than that for whatever reason, please let  
6 me know, but at this point my preference would be to say that  
7 locking the courtroom is what we can provide for you.

8 MR. ULLMAN: Okay. Thank you. And then the last  
9 question I had, at least as I recall the pretrial order, each  
10 objector is going to have a separate number series of  
11 designations, and I was just wondering because it occurs to  
12 me that a lot of the objectors may designate as an exhibit  
13 the same document, so we'd have the same document potentially  
14 coming in with six different numbers, whether we should try  
15 to find some way for common documents.

16 THE COURT: I'd sure like to see you minimize that.

17 MR. ULLMAN: Okay. So perhaps the objectors -- we  
18 can work amongst ourselves to have like a common Objectors'  
19 Exhibit 1, Exhibit 2, et cetera.

20 THE COURT: Please.

21 MR. ULLMAN: Okay. We'll try, your Honor. Thank  
22 you.

23 THE COURT: Yes.

24 MR. IRWIN: One other question occurs to us in terms  
25 of what the Court might expect in the form of openings and

1 closings.

2 THE COURT: Well, I do like opening statements. I  
3 think they are a very important part of the trial process as  
4 are closing arguments. It is not my intention, so that you  
5 can prepare properly for closing, to ask for post-trial  
6 briefs, so you should focus the full thrust of your arguments  
7 that you want to make to the Court that are based on the  
8 evidence on your closing argument and not on any written work  
9 product.

10 MR. IRWIN: Okay. Would we expect or anticipate  
11 some break between when the last witness finishes his or her  
12 testimony and the closings, or should we expect the closings  
13 to occur promptly thereafter?

14 THE COURT: If you have been as efficient at  
15 presenting your testimony as you all are holding out you will  
16 be, I am willing to be flexible on that, absolutely.

17 MR. IRWIN: All right.

18 THE COURT: We can work with that.

19 MR. IRWIN: And my last question, your Honor, we've  
20 talked about the city's witness sequence, which we just --  
21 which I just described, but we haven't talked about a process  
22 whereby the objectors would give us proper notice of the  
23 sequence of their witnesses. It would be great if they could  
24 tell us now what the witnesses -- the identities and the  
25 sequence of the witnesses are. I'm not sure if they could,

1 but at a minimum there needs to be some process whereby we  
2 can get the resources in place for cross-examination with  
3 some notice.

4 THE COURT: Is there any objection to this request?

5 MS. LEVINE: No objection, your Honor. The  
6 logistical issue that we've been discussing over the weekend  
7 and trying to grapple with is that a lot of our witnesses are  
8 really just going to be here for an hour, maybe two, and they  
9 have a lot of other things on their plate and travel  
10 schedules, so we were hoping for a little bit of flexibility  
11 just in terms of getting them here and back, but other than  
12 that, we have no objection.

13 THE COURT: Okay. When can city's counsel expect  
14 you to give them your best estimate of what the order of your  
15 witnesses will be?

16 MS. LEVINE: Maybe we can consult after this,  
17 especially now that we have an understanding of what they  
18 think their direct case will take.

19 THE COURT: Okay.

20 MS. LEVINE: Thank you.

21 THE COURT: So I think they're willing to work with  
22 you yet here today after court. I have been asked to remind  
23 you that in order for us to make a proper audio recording of  
24 this, people who speak need to speak near microphones. Now,  
25 at this time, as you can see, we only have one per table, and

1 that's a problem. I have asked that we get a second  
2 microphone for each table, and we're still going to try to do  
3 that, I think, but when you, for example, object in the heat  
4 of the moment to some trial testimony that you don't think is  
5 admissible, please try to be cognizant of this concern, as  
6 challenging as it may be. Anything further from anyone here  
7 this morning?

8           Okay. One more thing that I do need to bring to  
9 your attention. We have been requested to enforce certain  
10 procedures for getting you all into the courtroom and out of  
11 the courtroom that will minimize the disruption of other  
12 trial proceedings on this floor, so I am requesting of you  
13 and actually really instructing you to come up to the court  
14 here on the 7th floor and to leave the court using the  
15 Lafayette Street side elevators, not the Fort Street side  
16 elevators, not to linger in the hall either before, after, or  
17 during court at all, and while you are in the court to  
18 maintain that same decorum of silence that you would if you  
19 were in court and to try to hold your discussions among  
20 yourselves till you get either into the elevator or all the  
21 way down to the 1st floor. And we will be in this courtroom  
22 for this afternoon's oral arguments as well as all of court  
23 on Wednesday, Thursday, and Friday. Okay. Anything further?

24           MR. GORDON: Your Honor --

25           THE COURT: Mr. Gordon.

1           MR. GORDON:  -- I just wanted to ask -- last night  
2 the Retirement Systems did file a motion to compel, and I  
3 believe there were other motions to compel that have been  
4 filed over the weekend.  Do you anticipate addressing those  
5 on Wednesday of this week?

6           THE COURT:  We entered an order granting your motion  
7 for an expedited hearing.  You probably just didn't see it  
8 yet.  It is scheduled for Wednesday first thing along with  
9 the UAW.  Are there any others that I don't know about?  As  
10 far as I know, there's just those two, and then if there's a  
11 motion in limine, we'll probably set that for Wednesday  
12 morning as well.

13          MR. GORDON:  All right.  Thank you, your Honor.

14          MR. WERTHEIMER:  Your Honor, the UAW and the Flowers  
15 plaintiffs will be filing a motion today dealing with the  
16 executive -- or excuse me -- the attorney-client privilege  
17 issue relative to the state documents, so that'll be filed  
18 today, and I just notify the Court of that because the Court  
19 may want to schedule that.

20          THE COURT:  You'll be requesting an expedited  
21 hearing --

22          MR. WERTHEIMER:  Yes, we will.

23          THE COURT:  -- on that as well, sir?

24          MR. WERTHEIMER:  Yes.

25          THE COURT:  All right.  Well, if you do get it in

1 today before the close of business at five, I will likely  
2 grant an expedited hearing for Wednesday, but, you know, I do  
3 have to be sensitive to the issue of adequate notice.

4 MR. WERTHEIMER: And it does have to do with the  
5 state witnesses, which are not going to come up from our  
6 perspective until our case, so --

7 THE COURT: All right. Thank you.

8 MR. WERTHEIMER: Thank you.

9 THE COURT: Anyone have anything else? Apparently  
10 not. All right. We'll be in recess until one o'clock.

11 THE CLERK: All rise. Court is in recess.

12 (Proceedings concluded at 10:34 a.m.)

## INDEX

WITNESSES:

None

EXHIBITS:

None

I certify that the foregoing is a correct transcript from the sound recording of the proceedings in the above-entitled matter.

/s/ Lois Garrett

October 23, 2013

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Lois Garrett